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In re Application of
Schiavone et al.
Application No.: 09/462,716
PCT No.: PCT/FR98/01475
Int. Filing Date: 08 July 1998
Priority Date: 08 July 1997
Attorney's Docket No.: 5310-02200
For: METHOD FOR MINIMIZING A CORNER
EFFECT BY DENSIFYING THE INSULATING
LAYER

DECISION ON
PETITION
UNDER 37 CFR 1.137(b)

This decision is responsive to the "PETITION TO REVIVE APPLICATION ABANDONED UNINTENTIONALLY" filed 06 August 2001, requesting that the above identified application be revived.

BACKGROUND

On 08 July 1998, applicants filed international application PCT/FR98/01475, which claimed priority to an earlier French application, filed 08 July 1997. A copy of the international application was communicated from the International Bureau on 21 January 1999. A Demand for international preliminary examination, in which the United States was elected, was filed on 02 February 1999, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the national stage in the United States expired at midnight on 08 January 2000. Because 08 January 2000 fell on a Saturday, applicant had until midnight on 10 January 2000 to pay the basic national fee.

On 10 January 2000, applicants timely filed a transmittal letter for entry into the national stage in the United States. The transmittal letter was accompanied by, *inter alia*, a copy of the international application, a translation of the international application and a check for the basic national fee. Neither the oath/declaration as required by 35 U.S.C. 371(c)(4) nor the surcharge for providing the oath/declaration later than 30 months from

the earliest priority date as required by 37 CFR 1.492(e) were filed. These papers were assigned Serial No. 09/462, 716.

On 08 March 2000, the United States Patent and Trademark Office in its capacity as an Elected Office mailed the "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) indicating that applicant was required to file an oath/declaration and a surcharge fee. The Notice gave a one-month period from the date of mailing of the Notice for which to submit the missing items.

On 31 July 2001, the United States Designated/Elected Office (DO/EO/US) mailed the "NOTIFICATION OF ABANDONMENT" (Form PCT/DO/EO/909) indicating that applicant had "failed to file a timely response to the notification of MISSING REQUIREMENTS (Form PCT/DO/EO/905)."

On 06 August 2001, applicant submitted the present petition.

DISCUSSION

A petition under 37 CFR 1.137(b) requesting that the application be revived on the grounds of unintentional delay must be filed promptly after the applicant becomes aware of the abandonment and such petition must be accompanied (1) by a statement that the "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional," (2) by a proper reply, (3) by the petition fee required by law (37 CFR 1.17(m)), and (4) if the international filing date of the application is before June 8, 1995, any petition to revive under 37 CFR 1.137(b) must be accompanied by a terminal disclaimer and small entity fee of \$55.

Applicant submitted (1) a statement that the "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional," (2) an executed declaration and the \$130 surcharge for filing the declaration after 30 months from the earliest priority date, and (3) the petition fee of \$1240. The applicant was filed after June 8, 1995, so the fourth requirement does not apply.

CONCLUSION

The petition to revive the application is **GRANTED**.

The application is being returned to the United States Designated/Elected Office for processing in accordance with this decision; and, if appropriate, a Notification of

Acceptance of Application (Form PCT/DO/EO/903) will be mailed showing a 35 U.S.C. 371 date of 12 May 2000.



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